

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 98-0508P
Withholding Tax and Sales Tax
Calendar Years 1993, 1994, 1995, 1996, and 1997

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ISSUE(S)

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

II. **Tax Administration** – Interest

Authority: IC 6-8.1-10-1

Taxpayer protest the interest assessed.

STATEMENT OF FACTS

In a telephone conference hearing held on March 11, 1999 at 2:00 p.m. Eastern Standard Time, taxpayer protested the penalty and interest assessed.

Taxpayer failed to file returns and pay tax due. The department issued eighty-eight (88) BIA billings for withholding and sales tax between part of 1992 through December 1996. Taxpayer was assessed a twenty percent (20%) penalty for failure to file returns under IC 6-8.1-10-3. The majority of the billings reached the War-C stage when the taxpayer filed its returns and made payment of the tax. Upon receipt of taxpayer's tax returns, the department cancelled the BIA billings to correspond with the tax on the returns and issued billings for the tax plus penalty and interest.

Taxpayer's representative, in a letter dated August 29, 1998 states the taxpayer retained him in August 1997 and found that the taxpayer had given all tax information to a prior CPA firm. The CPA had all the information for a couple of years but never provided returns or information as to the reporting

requirements. It took the current CPA several months to retrieve the information and approximately two months in putting it all together. On February 18, 1998 taxpayer's representative sent a letter with a summary of taxpayer's actual liability requesting penalties be abated due to the prior accountant's omission. A month later, taxpayer states he sent a reminder to collection, that it needed a correct payoff. On April 14, 1998, Missy Nunnery requested that WH-1's be completed for each month.

Due to the above circumstances, taxpayer requests a forgiveness of all penalty and interest due from February 18, 1998 forward.

1. **Tax Administration** – Penalty

DISCUSSION

Taxpayer's history reveals it had not filed returns since June 1992 and has had late filing penalties assessed since 1991. For part of 1992 and 1993 through 1996, no returns were filed and no tax was paid. The department issued its BIA billings with a twenty percent (20%) penalty. By the end of 1997 these billings reached the War-C stage. The department telephoned and sent contact letters since August 30, 1994 to no avail until taxpayer, on March 27, 1998, stated he would send copies of front and back of checks. On March 31, 1998 a 30-day hold was placed on all warrants in order for the taxpayer to file actual returns. On April 15, 1998 the department tried to call twice about filing the returns so that the BIA's could be cancelled and on April 22, 1998 a copy of a balance due letter was faxed with notification that balance due billings would be issued. On April 23, 1998 taxpayer called and wanted interest stopped and penalties waived. On May 23, 1998 taxpayer faxed a letter asking for the balance due. On July 21, 1998 a check in the amount of \$16,265.79 was mailed by the taxpayer and posted to its liabilities on August 4, 1998. The department issued its balance due billings on August 5, 1998 which consisted of penalties and updated interest.

Taxpayer states the penalty should be waived as the previous accountant did not file the returns nor make payment and the IRS waives penalties on that basis. Taxpayer's representative states he has worked hard to get the returns filed and the tax paid.

Taxpayer, however, has a chronic history of not filing and paying trust tax both for sales and withholding since 1991. The department issued its BIA billings including a twenty percent (20%) penalty. The taxpayer did not reply until those billings reached the War-C stage, having already incurred the penalty.

The department, upon receipt of the actual returns billed the taxpayer at an AR-40 stage with penalty and interest, thereby removing the collection costs and upon payment of tax and interest, issued its balance due notices on August 5, 1998.

FINDING

Taxpayer's protest is denied. Taxpayer has not provided reasonable cause for the waiver of penalties.

II. **Tax Administration** – Interest

DISCUSSION

Taxpayer protests interest assessed after February 18, 1998 because the department failed to follow up until May 1998.

IC 6-8.1-10-1(c) does not allow the waiver of interest.

CONCLUSION

Taxpayer's protest is denied for Issues I and II.